
WATER POLLUTION CONTROL ADVISORY COUNCIL
Metcalf Building, Room 111
1520 East Sixth Avenue, Helena, MT
April 19, 2013
Meeting Minutes

ATTENDANCE

Council Members Present: Earl Salley, Michael Wendland, and Keith Smith.

Council Members Present via Telephone: Tammy Crone (for Kathleen Williams), Mitchell Leu, Stevie Neuman, and Karen Bucklin Sanchez.

Council Members Not in Attendance: Trevor Selch, Dude Tyler, Corey Fisher, and Roger Muggli.

Meeting Recorders Present: Sarah Norman and Laurie Crutcher.

Department Personnel Present: Amy Steinmetz, John North, Tom Reid, and Steve Kilbreath.

Presenter: Rick Mulder.

CALL TO ORDER

Acting Chairperson Earl Salley called the meeting to order at 10:00 a.m.

APPROVAL OF AGENDA

Mr. Keith Smith moved to approve the agenda as written; Mr. Michael Wendland seconded the motion. There was no opposition to the motion; the motion carried.

APPROVAL OF MINUTES

Mr. Wendland moved to approve the January 2013 meeting minutes as written; Mr. Smith seconded the motion. There was no opposition to the motion; the motion carried.

BRIEFING ITEMS

Legislative Briefing

Mr. John North, chief legal counsel for the Department of Environmental Quality (DEQ), reported on Senate Bills 76 and 347.

Mr. North said that Senate Bill 76 has passed and been signed by the Governor. It amends the standards section of the Water Quality Act pertaining to effluent standards. The bill provides specific authority and direction to adopt rules for cooling water intake structures. Mr. North explained that, with regard to existing structures, there are Phase 2 and 3 rules. The Environmental Protection Agency (EPA) attempted to adopt those rules in the mid-2000s but they were struck down. According to Mr. North, EPA will soon be coming out with new Phase 2 and 3 rules, and then will be proposing to adopt the rules. Mr. North anticipates that this will occur this fall, assuming that EPA remains on schedule.

Mr. North reported that Senate Bill 347 is still in the hopper. Mr. North anticipates that Bill 347 will probably reach the Governor's desk, but he is unsure what the Governor's office will do with the bill. The bill amends the definition of degradation in the Water Quality Act. When the new non-degradation

law passed in 1993, it directed the Board to adopt rules for what constitutes significant degradation. When the board of Health and Environmental Sciences adopted those criteria in 1994, they included criteria for flow. Increasing or decreasing flow by 15% of the mean monthly flow or 10% of the 7Q10 constitutes significant degradation. Mr. North said that Senator Vincent, who introduced the bill, has a couple of proposed mines in his district. His concern is that the mines are located within a wilderness area and, consequently, an authorization to degrade cannot be granted. His anxiety is that even though it appears that the actual environmental impact might not be significant, flows might still decrease in certain stretches of the streams by more than the percentages set forth by the criteria. When Bill 347 was originally introduced, it indicated that flow was not a parameter at all for non-degradation purposes. There was a serious amount of opposition to the bill, so amendments were made. Now Bill 347 applies only to decreases. It provides that a decrease in flow is not degradation if it is either for beneficial use or if the decrease in flow would not, in the Department's determination, present a reasonable risk of causing a significant adverse impact to fish population. So, the criterion has gone from being a percentage to being an environmental-impact based criterion. The rationale behind this is that in most applicable situations there will be an Environmental Impact Statement, the conclusions of which will be used to determine whether this criterion is met.

Montana Pollutant Discharge Elimination System Rule Update

Mr. Tom Reid, of DEQ's Water Protection Bureau, said that the topic of the Concentrated Animal Feeding Operation (CAFO) rule came to WPCAC in November 2012. The proposal was to adopt these CAFO rules as an update the federal CAFO rules as well as adopting technical standards for CAFOs. The Board initiated rulemaking on December 7, 2012. A public hearing was held on January 11, 2013. The Board then adopted these rules on March 22, 2013. Mr. Reid then discussed the five different issues that were raised during the public comment period.

1) Mr. Reid first discussed 3(a). This dealt with field specific assessments to determine which nutrients will be problematic for land application and focused on the wastes that are generated at CAFOs. These rules replaced DEQ 9, eliminating its simple soil test and allowing only the use of a risk-based assessment. During the public comment period, a contractor mentioned that this change would create a lot more work. Mr. Reid admitted that this may be true, but he added that it is a beneficial change because all of the information will be computerized, which will make access to information a simpler and more convenient process.

2) The second public comment was a clarification that all nutrient management plans must be updated every five years. All CAFOs in Montana are permitted under a general permit and, as such, must be resubmitted every five years.

3) The third public comment dealt with the winter application of manure, litter, and processed wastewater to frozen ground, which occasionally happens for unforeseen circumstances, although it is not advisable. The original proposal was that there would be no land application on frozen soil or during precipitation events greater than one quarter of an inch. NRCS proposed an exception, which was added as 7(c). These criteria were deemed reasonable and were accepted to allow some winter application in certain circumstances.

4) The fourth issue, which was brought up by NRCS, was the nitrogen fixation rate. Tables were taken from NRCS and put into DEQ 9, and these same nitrogen fixation rates were used in the rules. As NRCS had backed away from these specific levels, they suggested simpler language just for annual and perennial legumes. Consequently, such changes were made to the rules.

5) The MSU Extension Service Agricultural Fertilizer Guidelines for Montana Crops document, also referred to as EB-161, has always been used in Montana. It specifies the application rates for nitrogen and phosphorus for 90 percent of crops within the state. There was concern about the remaining crops that were not covered in the document. Now, EB-161 serves as a base reference.

Mr. Reid then discussed upcoming rules. He said that while he does not want to contradict Mr. North, he does not believe that there will be cooling water rules this fall. He bases this assumption upon the history of the rules. The upcoming rules that EPA is promulgating will affect the currently adopted rules for both new facilities and existing facilities. Mr. Reid anticipates coming back to WPCAC in the fall of 2013 with updates to discuss these next several rules.

Oil and Gas Legislative Impact Briefing

Mr. Steve Kilbreath, from DEQ's Director's Office, said that in this session there were many bills dealing with oil and gas. He reported that all of the bills, except one, were struck down. There were two bills that were introduced to address elimination of the tax holiday, but both of these died in committee. There were also many bills that came out to provide financial assistance for those communities in Eastern Montana that are being impacted in terms of infrastructure. Only House Bill 218, introduced by Duane Ankney, remains today. It is now out of its third Senate reading and is heading for the Governor's office. This bill will provide 15 million dollars next year and 10 million dollars in subsequent years, with a sunset date of 2020, from general fund money, to be implemented by the Department of Commerce and given to communities that can demonstrate that they have impacts related to oil and gas development. The majority of it is directed at water, wastewater, and solid waste type of impacts, while a smaller portion is directed at fire, police, and other types of impacts.

Mr. Kilbreath also mentioned House Bill 452, which was put forth by Rob Cook. He said that this bill was an impact fee that would have allowed local governments to assess a fee per RV spot, bed in work camps, or per motel room. Mr. Kilbreath said that while this bill had great logic, it died because it was a tax on the users.

In his PowerPoint presentation, Mr. Kilbreath discussed the prevalence of oil and gas in the history of Montana. He then described horizontal well activity in Montana. He said that, currently, the bulk of oil production in the state is coming out of Richland, Roosevelt, and Fallon Counties. Mr. Kilbreath briefly discussed production curves, comparing Montana's production with that of North Dakota. According to Mr. Kilbreath, the Bakken in Montana is approximately a quarter of the size of that of North Dakota, and it produces about a quarter as much oil as well. Mr. Kilbreath explained that this difference is due to stratigraphy and thickness. Overall, North Dakota has more oil, thickness, and technology than Montana.

Mr. Kilbreath described some of the infrastructure impacts that have presented challenges in Eastern Montana. These include public water submittals, road trips, and the population flux that has occurred in

schools. He said that all of these are directly related to North Dakota overflow. Mr. Kilbreath then linked this back to House Bill 218, which would allow funding for infrastructure.

Chairperson Salley asked whether North Dakota has a tax holiday. Mr. Kilbreath said no. In North Dakota, taxes are charged from the beginning of production.

Mr. Kilbreath mentioned that DEQ is in a unique position in that the Department deals only with the impacts related to this drilling. He said that the biggest issue being dealt with in Eastern Montana is wastewater, and Enforcement has been very active with this.

Mr. Kilbreath said that the Board of Oil and Gas has adopted rules and regulations for fracking related to well integrity and its testing. The opinion is that if there is well integrity, the fracking process itself is relatively safe. The big concern, according to Mr. Kilbreath, is what is going to happen 25 or 30 years from now.

Chairperson Salley asked what is being done with the water associated with this process. Mr. Kilbreath replied that it is being placed either in enhanced oil recovery wells or salt water disposal wells, and being injected in to the ground. He said that it currently costs between \$2-5 per barrel to dispose of the water after trucking it to a disposal site. He also discussed the solid wastes associated with the water. There is radioactive material in the suspended solids, which is then run through a filter sock. North Dakota does not allow any filter socks in their landfills. Montana only allows 15 picocuries per gram in its landfills, but, in June, there is a new landfill opening in Glendive that will be allowing 30.

In response to a question by Mr. Wendland, Mr. Kilbreath compared the challenges faced by North Dakota and Montana DEQ. He said that although they are facing similar challenges, North Dakota DEQ is better funded because they have been taxing this from the beginning.

Urban Storm Water Runoff Sampling for Pesticides

Mr. Rick Mulder, a hydrologist from the Montana Department of Agriculture, described his ongoing project collecting urban storm water samples and testing them for pesticides. Until recently, all sampling was done in agricultural areas, but a few years ago there was a shift to begin sampling in urban areas where pesticides are applied very heavily. So far, the project sampling areas have been in Helena, during 2011 and 2012, and in Billings, during 2011. All samples were tested for 148 pesticide compounds as well as nitrates. In Helena, 31 different pesticide compounds were detected and samples averaged 13 pesticides per sample. In Billings, 26 different pesticide compounds were found and the samples averaged 15 pesticides per sample. Mr. Mulder said that these results are very large. He explained that a drinking water standard is compared to the results, and that concern begins when concentrations are greater than 50% of the drinking water standard. Overall, the results showed that there do not appear to be any huge issues with regard to human health. The results are also compared to aquatic life benchmarks that are put forth by EPA. These results demonstrated that there is a potential problem, which is why this monitoring project is being continued.

Mr. Mulder hopes to expand his study to other cities, and mentioned that volunteer help is important. Ms. Karen Bucklin Sanchez asked whether Mr. Mulder would have funding for lab analysis if

communities came up with volunteers to do the testing. Mr. Mulder said that funding would not be an issue because both the lab and project are with the Department of Agriculture, so charges are not assessed by the sample. Mr. Smith brought up the topic of using samples that are already being collected by others, such as those taken for MS4 permits. Mr. Mulder expressed that this could be a possibility, and Mr. Kilbreath mentioned that perhaps he could share the names of people turning in samples for MS4 permits with Mr. Mulder.

ROUTINE WPCAC BUSINESS

Public Comment

No public comments were made.

Agenda Items for Next Meeting

Ms. Amy Steinmetz said that there would likely be a couple of action items on the agenda for the next WPCAC meeting on June 14, 2013. One of these items is the Silver Bow Creek Classification, which is undergoing additional legal review. Another item is Mr. Mike Suplee's nutrient package.

Ms. Steinmetz also mentioned that she recently spoke to Ms. Stacy Otterstrom with the Governor's office, and she learned that Ms. Otterstrom is still working on appointments that expired in January. So, she believes that WPCAC is still a way out. She also noted that Mr. Corey Fisher would not be rejoining the group and that attempts to contact Roger Muggli had been unsuccessful, but said that it sounded like everyone else had reapplied. She said that after the group adds new members, Mr. North may come and speak about WPCAC responsibilities and the Department's responsibility to WPCAC for bringing water quality issues.

Adjournment

Chairperson Salley made a motion to adjourn the meeting. Mr. Smith moved to adjourn and Mr. Wendland seconded the motion. All were in favor; the meeting adjourned at 12:05 p.m.

REFERENCED LINKS FOR MEETING MATERIALS

(Sites last updated 1/23/2013)

April 19, 2013 Agenda -

<http://deq.mt.gov/wqinfo/WPCAC/agendasMinutes/2013/April19/AGENDA4-19-13.pdf>

Agenda Links:

- Approved minutes from January 11, 2013 -
<http://deq.mt.gov/wqinfo/WPCAC/agendasMinutes/2013/January11/1-11-13ApprovedMinutes.pdf>
 - 2013 WPCAC Meeting Calendar -
<http://deq.mt.gov/wqinfo/WPCAC/AgendasMinutes/2013/2013WPCACCalendar.pdf>
-